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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201512
Party	Defendant Viking River Cruises (Bermuda) Ltd.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Viking Range Corporation, Opposer, v. Viking River Cruises (Bermuda) Ltd., Applicant.	Opposition No.: 91201512 APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS
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Opposer Viking Range Corporation ("Opposer") has filed a Motion to Consolidate Opposition Nos. 91201482, 91201495, 91201501, 91201502, 91201504, 91201506, and 91201512 (collectively, the "Oppositions"). Applicant Viking River Cruises (Bermuda) Ltd. ("Applicant") hereby opposes the Motion to Consolidate Proceedings ("Motion") and requests that the Oppositions remain as separate proceedings for the reasons discussed below.

Opposer has chosen to file seven different oppositions against Applicant's marks shown in Application Serial Nos. 85/133,747, 85/133,778, 85/136,552, 85/136,757, 85/136,505, 85/136,726, and 85/276,774. Opposer has aggressively and indiscriminately opposed each one of Applicant's marks, including some which, on their face, are patently unrelated to Opposer's goods or services and field of use. Because Opposer has taken the affirmative stance that each one of Applicant's marks is likely to be confused with Opposer's VIKING mark, Opposer should be required to litigate each opposition separately and prove this assertion as to each of the different marks at issue.

Applicant asserts that the marks at issue in each of the Oppositions are fundamentally different. While it is true that they share the term VIKING, the addition of other terms, such as LONGSHIPS, LEGEND, RIVER CRUISES and RIVER CRUISES EXPLORING THE WORLD IN COMFORT, in six of the seven marks is crucial in determining whether a likelihood of

confusion exists as between each mark and Opposer's VIKING mark. The differences in Applicant's marks not only change the Board's analysis of whether the marks are similar in appearance to Opposer's mark, but also its analysis of whether the marks are similar in overall commercial impression to Opposer's mark. While one of the marks at issue, namely VIKING, does not provide a specific indication as to the type or field of services offered thereunder, others, such as VIKING RIVER CRUISES and VIKING RIVER CRUISES EXPLORING THE WORLD IN COMFORT & Design, on their face indicate that the services offered under the marks could only be provided on or in connection with river cruises. Likewise, while some of Applicant's marks are word marks in standard character format, others are stylized and contain distinctive design components. In short, the differences in the appearance and overall commercial impression of Applicant's marks are not inconsequential but rather would weigh heavily on the Board's determination of whether a likelihood of confusion exists in each of the Oppositions.

Moreover, the services Applicant intends to offer in connection with each of the marks are different as well. With respect to Application Serial Nos. 85/133,747, 85/133,778, 85/136,552 and 85/136,505, Applicant has deleted "conducting cooking classes" from its description of services. As the registrations upon which Opposer's Oppositions rely all relate to products and services in the fields of cooking and kitchen appliances, Applicant's deletion of cooking classes from its recitation in some of the applications creates a material difference in the facts at issue in each of the Oppositions.

The Board may also consider the prejudice or inconvenience to the parties in deciding whether to consolidate proceedings. TBMP § 511. "37 CFR § 2.120(d)(1) does not provide for extra interrogatories in cases where more than one mark is pleaded and/or attacked by the plaintiff," whether in a single proceeding or consolidated proceedings. TBMP § 405.03(c). Although Applicant acknowledges that TBMP § 405.03(c) permits a propounding party to request that each interrogatory be answered with respect to each involved mark and have the

interrogatories be counted as if they pertained to only one mark, this accommodation is insufficient to remedy the prejudice Applicant would suffer if the proceedings are consolidated. First, Opposer seeks to consolidate not two or three but seven separate oppositions through its Motion. As such, the application of the limit on the number of interrogatories that a party may serve has a much more draconian effect on Applicant's ability to request information than in a case involving consolidation of only two or three proceedings. Moreover, Applicant has already incurred the time and expense of propounding a first set of interrogatories in six of the seven proceedings at issue. It would be an undue inconvenience to Applicant if it is required to reformulate and propound a new set of discovery for one consolidated proceeding. In addition, Applicant plans to serve additional requests that only apply to specific marks and for which TBMP § 405.03(c) will be of no avail; for example, Applicant plans to propound additional interrogatories that are probative of the frivolousness of Opposer's oppositions against those of Applicant's marks which on their face relate only to river cruises. If the proceedings are consolidated, Applicant will be prejudicially limited in its interrogatory requests and denied the opportunity to collect information necessary to defend against Opposer's attack of all seven of Applicant's marks. Finally, if Opposer believes Applicant has served "virtually identical" discovery requests, as Opposer claims in its Motion, then it will not be too burdensome or too much of an inconvenience for Opposer to respond to Applicant's requests.

Applicant therefore respectfully requests that Opposer's Motion to Consolidate Proceedings be denied. Should the Board nevertheless decide to consolidate the proceedings, Applicant requests that the proceedings be consolidated only after discovery is complete, as Opposer should not be excused from its obligation to respond to Applicant's discovery requests; nor should Applicant be unfairly limited to propounding a total of seventy-five interrogatories with respect to all seven Oppositions.

Dated: March 14, 2012

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS** is being served upon counsel for Opposer by First Class Mail on this 14 th day of March 2012, by placing the same in an envelope addressed as follows:

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